

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENDA PERRILL)	
Claimant)	
VS.)	
)	Docket No. 233,702
WESLEY MEDICAL CENTER)	
Respondent)	
AND)	
)	
GALEN OF KANSAS, INC.)	
Insurance Carrier)	
)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated December 21, 1998, entered by Administrative Law Judge Jon L. Frobish.

ISSUES

Claimant alleges that she contracted the Hepatitis C virus while working for the respondent as a phlebotomist. Initially, in an Order dated August 13, 1998, Judge Frobish found the claim compensable but reserved the issue of temporary total disability benefits until a later determination. The Appeals Board affirmed that Order. A second preliminary hearing was conducted. By Order dated December 21, 1998, which is the subject of this appeal, the Judge awarded claimant temporary total disability benefits.

Respondent and its insurance carrier contend the Judge erred by reconsidering the issue of temporary total disability benefits at the second hearing. They contend that claimant introduced no new relevant evidence at the second hearing and, therefore, the doctrines of res judicata and collateral estoppel were violated. Also, they contend the Judge erred as claimant has allegedly failed to prove that she is temporarily and totally disabled.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

- (1) Ms. Perrill claims that she contracted the Hepatitis C virus while working as a phlebotomist at Wesley Medical Center.

(2) For preliminary hearing purposes, the Judge determined that Ms. Perrill had proved her claim. That finding was later affirmed by the Appeals Board.

(3) At the first preliminary hearing, Ms. Perrill requested temporary total disability benefits. In the initial preliminary hearing Order, the Judge expressly reserved the temporary total disability benefits issue “until final award or until such time as the issue may be raised again.”

(4) A second preliminary hearing was conducted on December 21, 1998. The Judge granted the request for temporary total disability benefits for a certain period and Wesley Medical Center then filed this appeal.

CONCLUSIONS OF LAW

(1) This is an appeal from a preliminary hearing Order. The Board’s jurisdiction to review preliminary hearing findings is limited. The following issues are expressly subject to review from a preliminary hearing.¹

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim?
4. Is there any defense that goes to the compensability of the claim?

Additionally, the Appeals Board may review any preliminary hearing order where a judge has exceeded his or her jurisdiction or authority.²

(2) One of Wesley Medical Center’s contentions is that Ms. Perrill did not prove that she is temporarily and totally disabled. But that is not a preliminary hearing finding that the Appeals Board has jurisdiction to review at this time.

(3) As presented in the context of this claim, the defenses of res judicata and collateral estoppel are not defenses to the compensability of Ms. Perrill’s claim. Therefore, the issue whether Wesley Medical Center has proven either of those affirmative defenses is not a preliminary hearing issue that the Board may review at this juncture of the proceeding under K.S.A 1998 Supp. 44-534a.

¹ K.S.A. 1998 Supp. 44-534a.

² K.S.A. 1998 Supp. 44-551.

(4) Wesley Medical Center also contends that the Judge exceeded his authority by conducting a second preliminary hearing when the claimant allegedly had no new relevant evidence to introduce. Wesley argues that *res judicata* and collateral estoppel should prevent it from having to respond to multiple preliminary hearing requests based upon the same evidence. The Appeals Board generally agrees that multiple preliminary hearings should not be conducted when there is no new evidence. But the Appeals Board believes that the judges have discretion to conduct such additional preliminary hearings as they determine are needed.

The Division is not bound by technical rules of procedure but it is required to give the parties a reasonable opportunity to be heard and to present evidence, insure expeditious hearings, and act reasonably and without partiality.³ In the first preliminary hearing Order, the Judge expressly reserved deciding the temporary total disability benefits issue until a later hearing. That later hearing was held and the Judge decided the issue in Ms. Perrill's favor. The Judge did not exceed his jurisdiction and authority by holding the second preliminary hearing.

(5) Having found that the preliminary hearing findings that Wesley challenges are not reviewable at this time and having found that the Judge did not exceed his jurisdiction and authority, the Appeals Board concludes that it does not have jurisdiction to review the December 21, 1998 preliminary hearing Order and that this appeal should be dismissed.

(6) As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁴ Therefore, the issues presented in this appeal may be preserved should there be a review of the final award.

WHEREFORE, the Appeals Board dismisses this appeal and the Order dated December 21, 1998, entered by Judge Jon L. Frobish remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
P. Kelly Donley, Wichita, KS
Jon L. Frobish, Administrative Law Judge

³ K.S.A. 1998 Supp. 44-523(a).

⁴ K.S.A. 1998 Supp. 44-534a(a)(2).

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Philip S. Harness, Director